

225.000

Subpart 225.73—Acquisitions for Foreign Military Sales

- 225.7300 Scope of subpart.
- 225.7301 General.
- 225.7302 Procedures.
- 225.7303 Pricing acquisitions for FMS.
- 225.7303-1 Contractor sales to other foreign customers.
- 225.7303-2 Cost of doing business with a foreign government or an international organization.
- 225.7303-3 Government-to-government agreements.
- 225.7303-4 Contingent fees.
- 225.7303-5 Acquisitions wholly paid for from nonrepayable funds.
- 225.7304 FMS customer involvement.
- 225.7305 Limitation of liability.
- 225.7306 Exercise of options for FMS.
- 225.7307 Offset arrangements.
- 225.7308 Contract clauses.

Subpart 225.74—Defense Contractors Outside the United States

- 225.7401 General.
- 225.7402 Contractor personnel supporting a force deployed outside the United States.
- 225.7402-1 Scope.
- 225.7402-2 Definitions.
- 225.7402-3 Government support.
- 225.7402-4 Contract clauses.
- 225.7403 Antiterrorism/force protection.
- 225.7403-1 General.
- 225.7403-2 Contract clause.

Subpart 225.75—Balance of Payments Program

- 225.7500 Scope of subpart.
- 225.7501 Policy.
- 225.7502 Procedures.
- 225.7503 Contract clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

225.000 Scope of part.

This part also provides policy and procedures for—

- (1) Purchasing foreign defense supplies, services, and construction materials with special procedures for—
 - (i) Contracting with Canadian and other qualifying country sources; and
 - (ii) Cooperative projects;
- (2) Implementing statutory and policy restrictions on foreign acquisition;
- (3) Reporting contract performance outside the United States;
- (4) Foreign military sales acquisitions; and

48 CFR Ch. 2 (10–1–05 Edition)

(5) Antiterrorism/force protection for defense contractors outside the United States.

[68 FR 15618, Mar. 31, 2003]

225.001 General.

When evaluating offers of foreign end products, consider the following:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Statute (see Subpart 225.70); or

(B) DoD policy (see Subpart 225.71 and FAR 6.302-3).

(ii) If an exception to or waiver of a restriction in Subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements.* Determine whether the offered product is the product of one of the qualifying countries listed in 225.872-1.

(3) *Trade agreements.* If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c)).

(4) *Other trade sanctions and prohibited sources.*

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see 225.670).

(ii) Determine whether the offeror is a prohibited source (see Subpart 225.7).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in Subpart 225.5.

[68 FR 15618, Mar. 31, 2003]

225.003 Definitions.

As used in this part—

(1) *Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

(2) *Defense equipment* means any equipment, item of supply, component, or end product purchased by DoD.

(3) *Domestic concern* means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United

Department of Defense

225.103

States, even if the parent corporation is a foreign concern; or

(ii) An unincorporated concern having its principal place of business in the United States.

(4) *Domestic end product* has the meaning given in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; and 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) *Eligible product* means, instead of the definition in FAR 25.003—

(i) A foreign end product that—

(A) Is in a category listed in 225.401-70; and

(B) Is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition; or

(ii) A foreign service that is not subject to discriminatory treatment, due to the applicability of a trade agreement to a particular acquisition.

(6) *Foreign concern* means any concern other than a domestic concern.

(7) *Nonqualifying country* means a country other than the United States or a qualifying country.

(8) *Nonqualifying country component* means a component mined, produced, or manufactured in a nonqualifying country.

(9) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. Qualifying countries are listed in 225.872-1.

(10) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225-7001, Buy American Act and Balance of Payments Program; and 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program. *Qualifying country end product* is also defined in the clause at 252.225-7021, Trade Agreements.

(11) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(12) *Source*, when restricted by words such as foreign, domestic, or qualifying country, means the actual manufac-

turer or producer of the end product or component.

[68 FR 15618, Mar. 31, 2003, as amended at 69 FR 1927, Jan. 13, 2004]

Subpart 225.1—Buy American Act—Supplies

SOURCE: 68 FR 15618, Mar. 31, 2003, unless otherwise noted.

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements covered by the World Trade Organization Government Procurement Agreement, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or